



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: JUN 25 2003

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information you submitted indicates that you are a non-profit corporation formed under the laws of the . You state that you are devoted to help become a major player in the world IT (information technology), engineering and applied sciences markets.

Your bylaws and application provide that you will engage in multiple participation models:

1. To promote the development and growth of information technology, engineering and applied scientific research outsourcing industry;
2. To promote information technology, engineering and applied science capabilities in the U.S. market;
3. To compile and support a publicly accessible database of service providers;
4. To provide advisory support to the and companies in the information technology outsourcing industry; and
5. Any other lawful purpose approved by the Board of Directors.

You state that you plan to accomplish this through a variety of activities including: an online database, networking and promotional activities, research, and advisory services.

You state that your online database will be an information resource of software companies interested in conducting business with partners or assisting companies in finding customers by identifying providers of IT, engineering and applied science services. Your database lists providers by type: Featured Providers profile includes corporate identity information, company profile, products and services, professional staff and

other relevant information. Listed Providers feature only corporate identity and profile. You state that access to the database is free to all members and to anyone viewing the website.

You state that networking activities are designed to help connect members, [REDACTED] and [REDACTED] companies and executives to promote business. The activities include conferences, round table discussions, seminars and other events focusing on a variety of areas including software and IT outsourcing, Internet, ICT enabled services, management of scientific research and other activities to accomplish the goal of promoting [REDACTED] IT capabilities.

You state that you plan to circulate a newsletter in the U.S., presenting in depth profiles of the Featured Providers, as well as articles and developments related to information technology. However, due to financial constraints you have thus far been unable to do so and instead, all of the information is posted on your website. You state that your website is currently your main source of disseminating information.

You state that you facilitate and conduct research and analysis of market opportunities for trade and cooperation among companies. You also work on developing marketing approaches and methodologies to help [REDACTED] IT companies compete in the U.S. market and provide information on the availability of infrastructure to establish and operate a business in [REDACTED]. Research is co-sponsored by the [REDACTED] and [REDACTED] businesses and government entities. You state that your research teams are composed of members and selected bilingual consultants from the top U.S. business schools, recruited directly or through [REDACTED], an association of [REDACTED] speaking professionals with MBA degrees. Selected members provide [REDACTED] content. You state that all research materials are documented on your website, accessible by your members and the general public as downloadable files.

You state that you provide advisory services to client members. For U.S. clients, you will advise on the topic of outsourcing opportunities in IT, engineering and scientific research in [REDACTED] by conducting the initial search of potential partners. For [REDACTED] providers, you will provide advice in the preparation of customized marketing campaigns in the U.S., structuring and planning of discussions with U.S. corporate executives and provide detailed research of particular market niches. Individual project teams are composed of member companies and pre-selected bilingual consultants with MBA degrees recruited through [REDACTED] and other partner professional associations and companies.

You state that initial services are provided on a voluntary basis. You state that each member is required to donate a certain minimum amount of pro-bono consulting time to the organization. Any subsequent consulting services are conducted on a fee basis without your involvement. All fees for additional consulting services are subject to negotiation between the client and the project team. You state that you act as project facilitator by identifying the potential subject matter experts to ensure their qualification to provide advisory services. You may also provide white papers, business contacts or other knowledge of interest to the parties.

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Your Articles state that your business shall be carried on through your Board of Directors. The manner of election or appointment of the directors is prescribed in the bylaws. Your board of directors is elected at the annual meeting by a two-thirds vote of the directors then in office. No more than four directors are up for re-election each year. You currently have five directors as provided in your articles. Article IV of your bylaws provides that officers are elected by the board of directors and may be removed with or without cause by a majority of the board. Article II, section 1 of your bylaws states that you do not have voting members. Any action or vote is conducted through your board of directors. Exhibit A of your bylaws provides that no members have a right to vote and members may be expelled by a majority vote of the board of directors. In your letter of ██████████, you state that your membership may only suggest persons for nomination to the board and that the board has the discretion to elect its own members.

You state that you have two classes of members:

1. Class I – Corporate Members,
 - a. Featured and Listed Providers – any firm, society, company or division that is registered or incorporated in ██████████ and conducts business in IT, engineering, applied science or applied services and performs its activities for commercial gain.
 - b. Client Members – any firm, society, company or division that conducts business in the U.S. and is interested in outsourcing its IT, engineering, applied science and/or associated services to ██████████ service providers.
2. Class II – Associate members – any for-profit or nonprofit organization that regulates or substantially affects your sphere of activities, provides services to your provider members or performs functions or pursues goals similar to yours.

Client members receive access to the detailed database, ability to organize bidding processes among all members, access to all publications and research, eligibility to utilize pro bono and fee-based advisory services and discounted admission to promotional events and fairs. Featured Providers receive registration and prominent display in and promotion of the detailed company profile in the database, preferential right to participate in all organization-sponsored bidding processes, access to all publications and research, eligibility to utilize pro bono and fee-based advisory services and discounted admission to promotional events and fairs. Listed Providers receive read-only access to the database and free access to most of your publications, and research.

Your bylaws provide that your board of directors may establish an advisory board comprised of individuals from the business community who have expertise and experience to provide advice to enhance the strategic development of the corporation. However, the members of the advisory board do not have voting rights with respect to the management of the corporation and may be removed at any time, with or without cause. The bylaws provide that the board of directors may also designate person or groups of persons as sponsors, benefactors,

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contributors, advisors or friends of the corporation. Such persons will only serve in an honorary capacity and have no voting rights.

Your bylaws state that Featured Providers are assessed dues based on the number of employees. The fees range from \$████ to \$████ annually. All other membership categories are free. In your letter of ██████████, you state that you originally planned on charging membership fees and collecting corporate sponsorships, however, none of your members expressed willingness or interest to pay the annual dues and you do not expect to charge fees or dues in the foreseeable future. You state that you will continue funding the organization from personal savings. This is further confirmed in your letter of ██████████ and in your letter of ██████████, wherein you state that from your inception, your founding members agreed that the majority of the cost to create and support your website would be funded by one board member, who contributes services to cover the costs. The remaining board members pay for all other costs incurred with the organization. You state that your sources of financial support include personal funds from the founders, in-kind contributions (programming services), membership fees and corporate sponsorships.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, not organized for profit and no part of the net earnings of which inure to the benefit of private shareholders or individuals.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. The activities of such organization should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 56-65, 1956-1 C.B. 199 holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization is not entitled to exemption under section 501(c)(6) of the Code as a business league, even though it performs functions that are of benefit to the particular industry and the public generally.

Rev. Rul. 66-338, 1966-2 C.B. 226 holds that an organization formed to promote the interest of a particular retail trade, which advises its members in the operation of their individual businesses and sells supplies and equipment to them is not exempt under section 501(c)(6) of the Code. The revenue ruling states that by providing its members with an economy and convenience in the conduct in their individual businesses, the organization is performing

particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade or business.

Rev. Rul. 68-264, 1968-1 C.B. 264 defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to members of the organization in the operation of their own businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180 in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required by section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all of the commercial enterprises in a given trade community. Trade associations or business leagues under section 501(c)(6) are similar to chambers of commerce, except that they serve only the common business interests of the members of a single line of business or the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community.

Rev. Rul. 76-409, 1976-2 C.B. 154 describes a nonprofit organization that publishes and distributes to their potential customers, a directory containing members' names and addresses. The revenue ruling holds that the publication and distribution of a directory constitutes advertising for the individuals listed, and is therefore the performance of particular services for its members, rather than an activity aimed at the improvement of general business conditions. Therefore, the organization does not qualify for exemption under section 501(c)(6) of the Code.

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit and the activities of such organization should be directed to the improvement of business conditions of one or more lines of business. It may promote the general commercial welfare, but the activities of the organization cannot be primarily directed to the performance of particular services for individual persons. Section 1.501(c)(6)-1 of the Regulations. Your primary activities, the maintenance of a directory of the Featured and Listed providers and providing consulting services constitutes performance of particular services for individuals.

Your Provider Directory database directs clients and other consumers to particular member companies. The publication of such a directory constitutes advertising for the individuals listed. Rev. Rul. 76-409, *supra*. Similarly, your website features individual member companies. By limiting the scope to particular members, you are essentially providing advertising for those Featured Provider members.

By engaging in advisory consulting services to members, you generate particular information and specialized individual services to effect economies in the operation of your

members' individual businesses. By providing such services you are performing particular services for individuals. Rev. Rul. 68-264, *supra*. In addition, by providing the initial consulting services for clients, you are engaged in a regular business of a kind ordinarily carried on for profit, even if the services are provided on a cooperative basis. The initial consulting services promote the individual members who will provide the continued or expanded consulting services. Service such as this is performance of particular services for members. Rev. Rul. 56-65, *supra* and Rev. Rul. 66-338, *supra*.

Your activities are not directed at promoting the common economic interests of all of the commercial enterprises in a given trade community. Therefore, your right to exemption under section 501(c)(6) of the Code, if any, rests on your characterization as a business league or trade association.

Based on the statutory language of section 501(c)(6) of the Code, it is a well established principle that section 501(c)(6) is intended to apply only to membership organizations, which further the common business interests of their members and which are financed, at least in part, through membership dues. The legislative history of this statute, and the rules of statutory construction applicable to that section of the Code dealing with exempt organizations, provides that only membership organizations supported by membership dues or assessments are included in the term of the exemption under section 501(c)(6). While such an organization may receive a substantial portion or even the primary part of its income from non-member sources, membership support, both in the form of dues and involvement in the organization's activities, must be at a meaningful level.

The information you have submitted indicates your membership is not assessed any dues. Without any dues or fees, there is no support from members. You state that the membership may support your activities through mutual services such as listing themselves in the directory, engaging in research or consulting services or participation on the advisory board. Such support can constitute membership support. However, you do not have a voting membership.

Without voting members, you do not have membership within the meaning of section 501(c)(6) of the Code. Only your board of directors has "members" within the meaning of section 501(c)(6). However, your board of directors is a self-perpetuating board and your general membership does not have the power to elect your board members. Therefore, you are operated only by a small, self-perpetuating group of individuals and the group is a closed group.

While your general membership is "open," the members are not involved in the operation of the organization. As such, your membership is not considered open generally to all individuals or companies in the field of information technology or any other related line of business, and you are not considered to be a business league or trade association within the meaning of section 501(c)(6) of the Code as described in Rev. Rul. 73-411, *supra*.

For these reasons, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
TE/GE ([REDACTED])
[REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) [REDACTED]
[REDACTED]
Manager, Exempt Organizations
Technical Group 2